

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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T-03774A-10-0488

IN THE MATTER OF THE PETITION OF
ABOVENET COMMUNICATIONS, INC.,
FOR AUTHORITY TO ENCUMBER ITS
ASSETS IN CONNECTION WITH
FINANCING

DOCKET NO. T-03774A-10-

Arizona Corporation Commission

DOCKETED

APPLICATION

DEC -9 2010

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AboveNet Communications, Inc. ("AboveNet") respectfully requests approval from the Arizona Corporation Commission ("Commission") to encumber its assets in connection with financings of up to \$400 million for itself or its parent company, AboveNet, Inc. ("Parent") (Parent and AboveNet, together the "Borrowers"). AboveNet requests this authority pursuant to under A.R.S. § 40-285.

In support of this Petition, AboveNet provides the following information:

I. THE PETITIONER.

AboveNet, a Delaware corporation, is a wholly-owned subsidiary of Parent, a publicly-held Delaware corporation, headquartered at 360 Hamilton Avenue, White Plains, New York 10601, (914) 421-6700. Parent and its subsidiaries, including AboveNet, are leading providers of dedicated end-to-end fiber optic infrastructure and high-bandwidth Internet connectivity, both domestically and internationally. Their optical network enables their corporate, carrier and governmental customers to implement the latest data, video, Internet and multimedia applications. Parent and its subsidiaries, including AboveNet, are authorized to provide telecommunications services in 31 states and the District of Columbia. The Commission granted AboveNet (then named Metromedia Fiber Network Services, Inc.) a Certificate of Convenience and Necessity to provide "competitive resold and facilities-based non-switched dedicated and private line, high

capacity fiber optic telecommunications services" in Decision No. 62628 (June 9, 2000). AboveNet is also authorized by the Federal Communications Commission to provide both interstate and international telecommunications services.

II. DESIGNATED CONTACTS.

The designated contacts for questions concerning this Application are:

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Copies of any correspondence should also be sent to:

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III. DESCRIPTION OF THE TRANSACTION.

AboveNet proposes that Parent and/or AboveNet obtain up to \$400 million through one or more financing arrangements or credit facilities with banks, other financial institutions, and/or other types of investors (the "Financings"). The exact amounts and terms of each Financing, which may be completed in multiple tranches, will not be finalized until the specific arrangement(s) have been completed or shortly before funding of the various transactions, and will reflect the market conditions then existing. Some of the terms, such as interest rate, may fluctuate during the term of the Financing due to changes in market conditions and the financial condition

and/or the performance of the Borrowers. The terms of each Financing is expected to be substantially as follows:

Funding Providers: The funding providers may be banks, financial institutions, private lending institutions, private individuals, and/or other institutions, either individually or a consortium. The funding group may change over the life of the Financing.

Amount: Up to \$400 million. Portions of the financed funds may be in the form of conventional credit facilities such as revolving credits (which can be reborrowed during the term of the commitment); letters of credit; the issuance of secured or unsecured notes or debentures (including notes convertible into common stock) to banks, other types of financial institutions or other investors; or term loans.

Maturity: Any maturity date will be subject to negotiation and will depend on credit conditions. All maturity dates will be longer than one (1) year. It is anticipated that the maturity date will not exceed eight (8) years.

Interest: Any interest rate will likely be the market rate for similar Financings and will not be determined until such time as each Financing is finalized. As is typical in such transactions, the interest rate will have two components, a base rate and a margin rate. The base rate would be defined as the base or prime rate charged by a specified major bank for loans of similar size with similar maturities or as an adjusted federal funds rate or a specified London Interbank Rate. It is anticipated that the interest rate will be no more than LIBOR, plus six (6) percent.

Security: Relevant to this Petition, some and perhaps all of the loans to Borrower(s) are expected to be secured by a security interest in specified assets of AboveNet, including, but not limited to, a security interest in its receivables, tangible personal property, equipment, and intellectual property. The stock of AboveNet may also be pledged as additional security. In some cases, AboveNet may provide guarantees or be a borrower or co-borrower. The security documents will contain appropriate provisions indicating that the exercise of certain rights thereunder may be subject to obtaining prior regulatory approval.

Use of Proceeds: Some of the proceeds will be available for general corporate purposes, capital expenses, working capital, repayment of existing debt obligations, and return of capital to shareholders (either through a dividend or a stock buyback). Other proceeds may be used to fund the acquisition of other telecommunications companies and/or telecommunications assets.

Customer deposits and pre-payments, if any, will not be included in any encumbrance of assets.

1 **IV. PUBLIC INTEREST ANALYSIS.**

2 Approving this Petition will serve the public interest by enhancing the ability of AboveNet
3 to grow and compete in the highly competitive markets for telecommunications services in
4 Arizona and nationwide. Approval of the financing transaction described herein is not expected
5 directly to affect in any way the rates or services of AboveNet or its affiliates, or result in any
6 change in control of AboveNet or its affiliates. The financing arrangement will, among other
7 goals, provide AboveNet with the financial resources needed to further grow and expand its
8 business and to compete in today's highly competitive telecommunications environment.

9 AboveNet competes in Arizona and other markets with numerous other interexchange
10 carriers and enhanced service providers as well as the incumbent local exchange carrier and other
11 competitive local exchange carriers. In addition, because of the highly competitive environment in
12 which it operates, the rates charged customers are subject to market discipline and the services
13 offered generally are available from numerous other carriers. As a result, the source of funds and
14 capital structure of AboveNet would have little effect on customers in Arizona or elsewhere. In
15 the unlikely event that the capital structure becomes too costly and rates rise, customers may
16 simply migrate to other carriers with preferred rates. Thus, any adverse consequences from the
17 financing decisions impact the shareholders, not the customers, and any favorable consequences
18 benefit both its shareholders and consumers through higher profits, lower rates, and better services.

19 Moreover, because the public interest is best served by assuring the presence of numerous
20 telecommunications competitors in Arizona, it is important to provide such competitors with the
21 flexibility to arrange financing in the manner they deem most appropriate to carry on business so
22 long as there is no adverse impact on the public. To deny such flexibility would discourage new
23 competitors from entering the state and would encourage existing competitors in the state to seek a
24 more favorable regulatory environment elsewhere, neither of which would enhance the public
25 interest. Given the challenges facing competitive telecommunications carriers, the availability of
26 funds to AboveNet in this manner would benefit Arizona consumers. Finally, the Company notes
27 that Parent, a publicly-held company, is subject to the jurisdiction of the SEC. This also serves to

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1 protect the interests of the companies' investors and consumers in Arizona.

2 The approval requested herein is similar to the approval the Commission granted
3 AboveNet in Decision No. 69247 (January 19, 2007). In that Decision, the Commission found
4 that it was in the public interest to approve AboveNet's request to encumber its assets in
5 connection with a previous financing. In addition, the Commission found that AboveNet did not
6 require approval to participate in the financing as a borrower or co-borrower, because as a foreign
7 corporation engaged in interstate commerce, AboveNet is not required to obtain Commission
8 approval to issue debt. *See* Decision No. 69247 at Conclusion of Law No. 3, citing A.R.S. § 40-
9 301(D). AboveNet does not have Arizona-jurisdictional revenue over \$1 million, and AboveNet
10 is therefore not a "Class A" utility subject to the Commission's affiliated interest rules, A.A.C.
11 R14-2-801 et seq. Thus, only approval under A.R.S. § 40-285 is required.

12 **WHEREFORE** AboveNet respectfully requests that the Commission enter an order:

- 13 1. Granting AboveNet approval under A.R.S. § 40-285 to encumber its assets in
14 connection with the financing described herein;
- 15 2. Granting AboveNet authorization to engage in any transactions and to execute any
16 documents necessary to effectuate the authorizations granted in this docket; and
- 17 3. Granting AboveNet any other authorizations necessary to participate in the
18 financing described herein.

19 RESPECTFULLY SUBMITTED THIS 9th day of December, 2010.

20 ROSHKA DEWULF & PATTEN, PLC

21
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1 Original and 13 copies of the foregoing
2 filed this ~~9th~~ day of December 2010 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copies of the foregoing hand-delivered/mailed
8 this ~~9th~~ day of December, 2010 to:

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